



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

DERRICK L. SINGLETON,  
Petitioner,

vs.

STATE OF SOUTH CAROLINA and  
WARDEN OF PERRY CORRECTIONAL  
INSTITUTION,  
Respondents.

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CIVIL ACTION NO. 0:08-1900-HFF-PJG

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ORDER

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This case was filed as a 28 U.S.C. § 2254 action. Petitioner is proceeding pro se. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting that Respondents' motion for summary judgment be granted. The Magistrate Judge's recommendation is based on her opinion that Petitioner's petition was untimely filed and is therefore barred by § 2244(d). The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on July 13, 2009, and the Clerk of Court entered Petitioner's objections to the Report on July 24, 2009. In his objections, Petitioner states that his legal materials were seized at the time that his § 2254 action was due. He then asserts that the seizure effectively prevented the timely filing of his petition. Hence, he requests that the Court remand the matter to the Magistrate Judge so that she can make a recommendation concerning the merits of Petitioner's claims. Without deciding on the validity of Petitioner's assertion, in an abundance of caution and in the interest of justice, the Court will grant the request.

Therefore, this action is hereby **REMANDED** to the Magistrate Judge for a Report on the merits of Petitioner's § 2254 claims. If necessary, the Magistrate Judge should also make a recommendation concerning the above-referenced seizure issue.

**IT IS SO ORDERED.**

Signed this 27th day of July, 2009, in Spartanburg, South Carolina.

s/ Henry F. Floyd  
HENRY F. FLOYD  
UNITED STATES DISTRICT JUDGE

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**NOTICE OF RIGHT TO APPEAL**

Petitioner is hereby notified of the right to appeal this Order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.